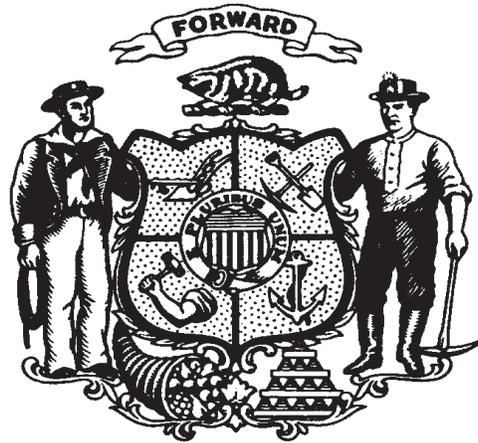


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Emergency rules now in effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade and Consumer Protection (2)

1. Rules adopted creating **s. ATCP 11.72 (15), (16), (17) and (18)**, relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any mammal known to have been in contact with a prairie dog since April 1, 2003.

Finding of emergency

(1) During May and June 2003, at least 12 people in Wisconsin have developed illnesses within one to two weeks after the people have had contact with prairie dogs. Symptoms of the human illness include fever, cough, rash and swollen lymph nodes. Several of these people have needed to be hospitalized.

(2) Preliminary laboratory results indicate that the cause of the human illness is an orthopox virus that could be transmitted by prairie dogs. Some of the pet prairie dogs have exhibited signs of illness. There have been reports of other mammals that have come in contact with prairie dogs also exhibiting signs of illness.

(3) It is necessary to reduce the opportunities for human interaction with prairie dogs or other mammals that have been in contact with prairie dogs in order to protect the health, safety and welfare of Wisconsin residents. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection is adopting this emergency rule to protect the health, safety and welfare of the public.

Publication Date: June 12, 2003
Effective Date: June 12, 2003
Expiration Date: November 9, 2003
Hearing Date: July 15, 2003

2. Rules adopted revising **s. ATCP 11.72 (15), (16), (17) and (18)**, relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any rodent from Africa.

Finding of emergency

1. As a result of the outbreak of an orthopox virus later identified as monkey pox in Wisconsin, the department adopted an emergency rule in early June, 2003.

2. Since the June, 2003 emergency rule was adopted, there has been additional information learned about the origins of the infected animals and the actual form of orthopox virus responsible for the symptoms. As a result of this new information, the department has been able to refine its identification of animals that should be subject to the prohibitions previously imposed.

3. After the department adopted the emergency rule (albeit before the rule was published) the CDC and FDA adopted their joint order that indicates the animals of concern are prairie dogs and African rodents.

4. The CDC and FDA joint order confirms the threat to humans from exposure to prairie dogs and African rodents.

5. This amended emergency rule provides consistency between the CDC and FDA joint order and Wisconsin's emergency rule.

6. The Wisconsin Department of Agriculture, Trade and Consumer Protection seeks to provide the greatest protection for Wisconsin citizens while creating the least acceptable disruption to their lives and businesses. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection adopts an amended emergency rule to protect the health, safety and welfare of the public.

Publication Date: July 24, 2003
Effective Date: July 24, 2003
Expiration Date: November 9, 2003
Hearing Date: September 3, 2003

Chiropractic Examining Board

Rules adopted revising **ch. Chir 2**, relating to passing and retaking the practical examination.

Finding of emergency

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the

National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in s. Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is proceeding with promulgating these rule changes through a proposed permanent rule-making order.

Publication Date: June 28, 2003
Effective Date: June 28, 2003
Expiration Date: November 25, 2003
Hearing Date: October 16, 2003

Commerce

(Financial Resources for Bus. and Communities, Chs. Comm 105-128)

Rules were adopted revising **ch. Comm 108**, relating to the use of rapid response funds in economically depressed areas of Wisconsin to preserve economic development.

Finding of emergency

The Department of Commerce finds that an emergency exists and that the adoption of the rule included in this order is necessary for the immediate preservation of public health, safety and welfare.

Analysis of Rules

Statutory Authority: ss. 560.02 (4) and 560.04, Stats.

Statute Interpreted: s. 560.04, Stats.

Pursuant to s. 560.04, Stats., the Department of Commerce (Commerce), as a part of its comprehensive duties involving community development and economic development, administers federal funds in the form of grants to eligible communities related to economic development. Under current rules, the maximum amount of funds that may be awarded to a community is \$1 million per calendar year and the maximum amount that a business may borrow from a local government under the economic development program is also \$1 million during any 5-year period. The timing and dollar limitations specified in the rules are barriers to providing a comprehensive and rapid response to changing economic conditions in a community.

Given the uncertainty inherent in today's marketplace, Commerce would like to maximize the use of federal community development block grant funds to positively impact local economies. Under the rules, as currently structured, Commerce's ability to respond rapidly to actual or potential plant closings or relocations in a specific geographical region is limited. The following emergency rule will allow Commerce to respond more rapidly to changing economic conditions.

This rule provides Commerce, working collaboratively with local communities, the ability to quickly respond to changing economic conditions due to potential plant closings, business relocations, layoffs, and other economic factors that could negatively affect the economic conditions in the community and state.

Publication Date: March 22, 2003
Effective Date: March 22, 2003
Expiration Date: August 19, 2003
Hearing Date: June 16, 2003
Extension Through: October 17, 2003

Employment Relations Commission

Rules adopted amending **ss. ERC 1.06 (1) to (3), 10.21 (1) to (5) and 20.21 (1) to (4)**, relating to increased filing fees.

Finding of emergency

The Employment Relations Commission finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. Effective July 26, 2003, 2003 Wisconsin Act 33 reduced the Employment Relations Commission's annual budget by \$400,000 in General Program Revenue (GPR) and eliminated 4.0 GPR supported positions. These reductions lowered the Employment Relations Commission's annual base GPR funding level and the number of GPR supported positions by more than 16%.

Act 33 also abolished the Personnel Commission and transferred certain of the Personnel Commission's dispute resolution responsibilities to the Employment Relations Commission.

3. 2003 Wisconsin Act 33 increased the Employment Relations Commission's Program Revenue (PR) funding and positions by \$237,800 and 2.0 PR positions respectively. The revenue to support these increases will be provided by increasing existing filing fees for certain dispute resolution services.

4. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 2.0 PR positions, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

The emergency rules increase existing filing fees for Commission dispute resolution services in amounts necessary to fund 2.0 Program Revenue positions as authorized by 2003 Wisconsin Act 33.

Sections 111.09, 111.71, 111.94, 227.11 and 227.24., Stats., authorize promulgation of these emergency rules.

Publication Date: August 25, 2003
Effective Date: September 15, 2003
Expiration Date: January 22, 2004

Financial Institutions – Securities

Rules adopted revising **ch. DFI–Sec 4**, relating to conforming Wisconsin’s Securities Law rules concerning broker–dealer books and records to federally–mandated standards under the Securities Exchange Act.

Finding of emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

Congress in its passage of the National Securities Markets Improvement Act (“NSMIA”) in 1996 prohibited state securities regulators from establishing or enforcing under their state securities laws or rules, record–keeping requirements for securities broker–dealers that are inconsistent with, or not required by, the U.S. Securities and Exchange Commission (“SEC”).

Following passage of NSMIA, the SEC commenced a rule–making process that spanned a several–year period (including a 1998 reproposal of the entirety of the proposed rules for a new public comment period), culminating in adoption in late 2001 of an extensive series of broker–dealer books and records rules for effectiveness commencing May 2, 2003. The SEC’s revised books and records rules cover a comprehensive series of areas, including: (1) customer account records; (2) order ticket information; (3) customer complaints; (4) mandated reports and audits; (5) compliance manuals; (6) records maintenance, retention, production and access; and (7) records required to be maintained at a firm’s home office and at “local” offices.

Because of the preemptive effects of federal law under NSMIA, all of the existing provisions of the Wisconsin administrative rules in Chapter SEC 4 under the Wisconsin Securities Law dealing with broker–dealer books and records covering the information categories (1) to (6) described above are superseded by the federal rules established by the SEC that became effective today, May 2, 2003. Additionally, certain existing Wisconsin Rule of Conduct provisions tied to the existing Wisconsin books and records rules need to be revised appropriately.

Consequently, it is necessary to immediately revise and amend Wisconsin’s broker–dealer books and records rules to conform to the federal rules that now have become effective, and to remove inconsistent requirements contained in the existing Wisconsin books and record–keeping rules. A subcommittee of the North American Securities Administrators Association (“NASAA”), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the SEC’s books and record–keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation–by–reference–of–the–federal–rule treatment as set forth in this Order Adopting Emergency Rules.

Accordingly, the emergency rules do the following:

(1) Under Section 1, the entirety of the existing Wisconsin general books and records requirement for licensed broker–dealers as set forth in rules DFI–Sec 4.03 (1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), is repealed and recreated to incorporate by reference the new, superseding, federal rules adopted by the SEC contained in sections 17a–3 and 4 under the Securities Exchange Act. New sub. (1) requires a firm to retain the books and records cross–referenced in federal SEC rules 17a–3 and 4, and new sub. (2) incorporates by reference the records preservation and retention requirements in federal SEC rule 17a–4. New subsections (3) and (4) replace the current Wisconsin rules in DFI–Sec 4.03 (3) and (4) [that prescribe branch office records and retention requirements], with language which provides that the books and records required to be prepared and maintained at broker–dealer offices triggering the definition of “branch office” under current rule DFI–Sec 1.02 (7) (a), are the same records prescribed under the new federal provisions in new federal Rule 17a–3, and must be held for the retention periods specified in new federal Rule 17a–4.

(2) Section 2 repeals current Wisconsin rule DFI–Sec 4.03 (6) [which permitted broker–dealers to utilize alternative records to satisfy the principal office and branch office records required in existing rules DFI–Sec 4.03 (1) and (3)], because under NSMIA, states no longer have the authority to permit alternative forms of broker–dealer records different from the records prescribed by federal law.

(3) Section 3 is a renumbering of current rule DFI–Sec 4.03 (7) to reflect the repeal of DFI–Sec 4.03 (6) in Section 2 above.

(4) Under Section 4, the existing Wisconsin Rule of Conduct provision in DFI–Sec 4.05 (5) [requiring broker–dealers to provide customers with prescribed new account information and subsequent amendments to such information] is amended to both substitute a cross–reference to the new federal provision on that subject in SEC rule 17a–3(a)(17) under the Securities Exchange Act of 1934, and to repeal language in the Wisconsin rule inconsistent with federal provisions.

Publication Date: May 7, 2003
Effective Date: May 7, 2003
Expiration Date: October 4, 2003
Hearing Date: August 11, 2003
Extension Through: November 30, 2003

Health and Family Services (Management, Technology, Chs. HFS 1—)

Rules adopted revising **ch. HFS 15**, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF–MR).

Exemption from finding of emergency

The legislature by section 9124 (3) (b) of 2003 Wisconsin Act 33 provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Health and Family Services

2003 Wisconsin Act 33 modified section 50.14 of the Wisconsin Statutes, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF–MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF–MRs) are assessed a

monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF–MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long–term care facilities must pay a monetary assessment to the Department by:

- eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by Medicare under 42 USC 1395 to 1395ccc; and

- eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF–MRs, from \$100 per bed to \$435 per bed in fiscal year 2003–04 and \$445 per bed in fiscal year 2004–05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003–04, \$13.8 million in fiscal year 2004–05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home’s licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

In response to these statutory changes, by this order, the Department is modifying chapter HFS 15 accordingly.

The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: July 28, 2003
Effective Date: July 28, 2003
Expiration Date: December 25, 2003
Hearing Date: October 15, 2003

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 101 to 107**, relating to the Medicaid Family Planning Demonstration Project.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states’ use of Medicaid funds. On June 14, 2002, the Centers for Medicare and Medicaid granted the waiver, effective January 1, 2003. The waiver allows the state to

expand Medicaid services by providing coverage of family planning services for females of child–bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child–bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: January 31, 2003
Effective Date: January 31, 2003*
Expiration Date: June 30, 2003
Hearing Dates: April 25 & 28, 2003

* The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003

Health and Family Services (2) (Health, Chs. HFS 110—)

1. Rules adopted revising **ch. HFS 119**, relating to operation of the health insurance risk–sharing plan.

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co–equal twenty percent amounts.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty–nine percent of the 16,445 HIRSP policies in effect in

March 2003, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 10.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 18.5%. Rate increases for individual policyholders within Plan 1 range from 5.4% to 20.9%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. Plan 1 rate increases reflect general and industry-wide premium increases and take into account the increase in costs associated with Plan 1 claims.

A second type of medical coverage provided by HIRSP is for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Eleven percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 15.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 23.8%. Rate increases for individual policyholders within Plan 2 range from 9.9% to 26.5%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. Plan 2 rate increases reflect general and industry-wide cost increases and take into account the increase in costs associated with Plan 2 claims. Plan 2 premiums are also set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

The Department through this order amends ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (2) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also increasing total HIRSP insurer assessments and reducing provider payment rates, in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2002. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2003. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$35,444,109. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$39,170,353. On April 9, 2003, the HIRSP Board of Governors approved the calendar year 2002 reconciliation process. On May 19, 2003 the Board approved the HIRSP budget for the plan year July 1, 2003 through June 30, 2004.

The department's authority to amend these rules is found in s. 149.143 (2) (a) 2., 3., 4., and (3), Stats., and s. 227.11 (2) Stats. The rule interprets ss. 149.142, 149.143, 149.146, and 149.165, Stats.

Publication Date: June 24, 2003
Effective Date: July 1, 2003
Expiration Date: November 28, 2003
Hearing Date: July 15, 2003

- Rules were adopted revising **ch. HFS 144**, relating to immunization of students.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department has a rulemaking order (CR03-033) containing a variety of relatively minor changes to over a dozen chapters of administrative rules administered by the Department. The Department had anticipated that CR03-033 would be in effect on or before September 1, 2003. One of the proposed changes in CR03-033 is a provision that changes school immunization standards. Clearinghouse Rule 03-033 has been delayed for reasons unrelated to the provisions in this order. Consequently, the identical provisions in CR03-033 will not be in effect on September 1, 2003. For reasons stated subsequently in this analysis, unless these changes to the minimum immunization requirements in chapter HFS 144, Immunization of Students, are in effect September 1, 2003, needless confusion and unintended effects will result.

In 2002, the Department's Wisconsin Immunization Program requested minor language changes to chapter HFS 144 as part of a planned "omnibus" rulemaking order containing a variety of proposed relatively minor changes. The HFS 144 proposed rule changes affect time sensitive vaccine requirements and were made so the Department's immunization requirements adhere to new vaccine recommendations made by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP.) For example, the current requirement for Measles-Mumps-Rubella vaccine (MMR) is two doses with the first dose received on or after the first birthday. New ACIP recommendations allow a 4-day grace period so children receiving doses four days before their first birthday would be compliant. The current requirements in chapter HFS 144 do not accept as valid a dose of MMR that was given even one day prior to the first birthday. Similar time sensitive changes impact the vaccine requirement for a dose of DTaP vaccine after the fourth birthday and a dose of Hib vaccine after the first birthday.

These changes need to be in place before the start of the new 2003-04 school year. Although the changes are minor in nature, they have a significant effect on the law's enforcement at the day care and school level. Again, using MMR as an example, without the change, the school will count the child that received the MMR one day before the first birthday as non-compliant. Non-compliance can, pursuant to s. 252.04 (5), Stats., result in exclusion from school or, pursuant to s. 252.04 (6), Stats., the name of the non-complaint student being turned over to the local district attorney's office for possible court action against the parents. Therefore, the child will either need to be re-immunized or the parent will need to sign a waiver, pursuant to s. 252.04 (3), Stats. The re-immunization requirement puts the school at odds with the health care provider that is currently acting in accordance with the revised ACIP recommendations. The signing of a waiver is not a desirable option as the school reporting process to the Department counts that child as waiving all vaccine requirements and will yield misleading information as to the Immunization Law compliance level of Wisconsin day care and student populations. The Department's Immunization Program sends Immunization Law packets to the schools in mid-August. These packets include the information the schools need for enforcement of the law when school starts in September. It is imperative that the Department have the rule changes in place before the start of the school year and include the information in the school packets. Therefore, the

Department is issuing this emergency order to allow school districts and health professionals to act in a timely manner.

Publication Date: August 15, 2003
Effective Date: August 15, 2003
Expiration Date: January 12, 2004
Hearing Date: September 12, 2003

Insurance (2)

1. Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2003 and relating to establishing a rate of compensation for fund peer review council members and consultants.

Finding of emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish PCF fees is first available in January of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2003.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 03–039, will be filed with the secretary of state in time to take effect October 1, 2003. Because the fund fee provisions of this rule first apply on July 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 14, 2003.

Publication Date: June 11, 2003
Effective Date: July 1, 2003
Expiration Date: November 28, 2003

2. Rules adopted creating **s. Ins 8.49**, relating to Small Employer Uniform Employee Application.

Finding of emergency

The Commissioner of Insurance finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The rule and the uniform small employer application are required by statute to be available by August 1, 2003. Due to implementation of 45 CFR 164 of HIPAA privacy provisions for covered entities, including health plans, and the commissioner's efforts to obtain clarification regarding authorization for release of personally identifiable health information provisions from the Office of Civil Rights a Division of Centers Medicare & Medicaid Services charged with enforcement of the privacy portions of HIPAA, it is not possible to complete the permanent rule process in time to meet the statutory requirement.

The commissioner intends to file the permanent rule corresponding to this emergency rule, clearinghouse No. 03–055, with the secretary of state within the next 150 days.

Because the uniform application form is required to be available by August 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule was held on July 11, 2003, in accordance with s. 227.17, Wis. Stat., and the commissioner has had benefit of reviewing public comments and the clearinghouse report prior to issuing this emergency rule.

Publication Date: August 1, 2003
Effective Date: August 1, 2003
Expiration Date: December 29, 2003

Natural Resources (2) (Fish, Game, etc., Chs. NR 1–)

1. Rules were adopted revising **ch. NR 10**, relating to the 2003 migratory game bird season.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 29, 2003
Effective Date: August 29, 2003
Expiration Date: January 26, 2004
Hearing Date: October 14, 2003

2. Rules were adopted revising **ch. NR 10**, relating to Chronic Wasting Disease (CWD) in Wisconsin.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Publication Date: September 11, 2003
Effective Date: September 11, 2003
Expiration Date: February 8, 2004
Hearing Date: October 13, 2003

Workforce Development (Civil Rights, Chs. DWD 210—)

Rules adopted repealing **chs. PC 1, 2, 4, 5 and 7** and revising **chs. DWD 218 and 225** and creating **ch. DWD 224**, relating to the transfer of personnel commission responsibilities to the equal rights division.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2003 Wisconsin Act 33 transfers the responsibility for processing certain employment-related complaints against state respondents from the Personnel Commission (PC) to the Equal Rights Division (ERD) effective upon publication of 2003 Wisconsin Act 33. The ERD needs rules governing the procedures for processing these complaints effective immediately to ensure that service is not seriously delayed by this administrative change. The PC expects to transfer approximately 200 pending cases to ERD immediately.

2003 Wisconsin Act 33 transfers responsibility from the PC to ERD for 9 different types of employment-related complaints against state respondents. The ERD has had responsibility for processing complaints against nonstate

respondents for 8 of the 9 types of complaints. This order makes minor amendments to existing rules to include state respondents and creates a new rule chapter on whistleblower protection for state employees, which is the one issue that ERD has not previously handled because the law does not apply to nonstate respondents. The newly-created whistleblower rules are similar to the existing fair employment rules.

A nonstatutory provision of 2003 Wisconsin Act 33 transfers existing PC rules to ERD. This order repeals those rules. Adopting the PC rules would result in different procedures for cases against state respondents and nonstate respondents for no logical reason. The dual system would be difficult to administer and confusing to complainants, many of whom are pro se. Even if ERD adopted the PC rules, an emergency rule would be necessary to remove confusing irrelevant and obsolete information.

This order repeals the PC rules and revises ERD rules by emergency rule to ensure that a clear, logical, and fair process is in place for handling the newly-transferred responsibilities for protecting Wisconsin's workforce from discrimination and retaliation.

Publication Date: August 5, 2003
Effective Date: August 5, 2003
Expiration Date: January 2, 2004
Hearing Date: October 27, 2003
[See Notice This Register]

Scope statements

Administration

Subject

The Department of Administration proposes to amend chapters Adm 1, relating to Parking, Adm 2, relating to Use of State Buildings and Facilities, Adm 20 relating to Selecting and Contracting Architect/Engineer Services and Adm 21 relating to Advertising, Bidding and Award of Construction Contracts.

Policy analysis

The Department of Administration is beginning the process to update and modify chapters Adm 1, 2, 20 and 21 to bring department administrative rules in line with state statutes, current organizational structure as well as current industry practices.

Chapters Adm 1 and 2 regarding parking on state grounds and state buildings and facilities use will have modifications reflecting current needs, policies and practices of the department.

Chapters Adm 20 and 21 were created in 1979 and have had little or no updating with respect to architect/engineer (A/E) contracting and construction contracting. Dollar threshold values for governor approval of contracts, delegation and A/E solicitation practices need modification to stay current with statute changes and construction price indexes. Threshold values for delegation and signature authority, currently in administrative code, are based on pre–1979 levels while construction costs have increased considerably due to inflationary pressures. Further statutory changes regarding governor signature requirements have changed and administrative code needs to reflect those changes.

The department also needs to recognize current business and commerce practices of electronic data and information transmission. The department proposes to recognize solicitation for A/E services, construction bidding and contract information via the department website through administrative code modification.

This revision to the administrative code will allow for more efficient, current and up to date practices for design and construction of state facilities and the usage of those facilities.

Statutory authority

Sections 16.84, 16.843, 16.845, 16.846, 16.85 and 16.855 (15), Stats.

Staff time required

Approximately 80 hours of department staff time will be needed to promulgate the rules.

Educational Approval Board

Subject

Creating and amending current administrative rules under chapters EAB 1 to 11. *Objective of rule.* This rule will implement provisions related to the creation of a student protection fund. Enabling legislation was contained in the 2003–05 biennial budget (2003 Wisconsin Act 33). In

addition, the rule will clarify a number of existing rule provisions.

Policy analysis

This rule will make the following changes.

- Create provisions related to implementing a student protection fund.
- Amend surety bond requirements as a result of creating a student protection fund.
- Clarify the instructor qualifications required by the EAB
- Clarify who may file a student complaint and when it must be filed.
- Clarify when newly approved schools are required to submit 1st payment renewal fee.

Statutory authority

Sections 45.54 (2), (3), (10)(c)4. and 227.11 (2)

Staff time required

It is estimated that 125 hours will be required to develop this rule order.

Health and Family Services

Subject

The Department proposes to create ch. HFS 36, rules relating to community–based psychosocial service programs.

Policy analysis

1997 Wisconsin Act 27 created s. 49.45 (30e), Stats., relating to conditions for reimbursement of community–based psychosocial services programs under the medical assistance program and authorized the department to create rules establishing the scope of the psychosocial services that may be provided under s. 49.46 (2) (b) 6. Lm, Stats., standards for eligibility for those services, and certification requirements for community–based psychosocial programs under the medical assistance program. Pursuant to Act 27, the department in October 1998 initiated rulemaking to create ch. HFS 36. That rulemaking effort was subsequently abandoned due to issues concerning the proposed rule's failure to guarantee that the psychosocial services authorized by Act 27 would be available statewide. In September 2003, the department, pursuant to s. 227.14 (6) (b), Stats., gave notice to the legislature of its intention not to promulgate the current proposed rule.

By issuance of this new Statement of Scope, the department again proposes to promulgate rules required by s. 49.45 (30e) Stats. In addition to establishing the scope of the psychosocial service programs, standards for certification and eligibility for services, these proposed rules will also establish other conditions of coverage of community based psychosocial services under the medical assistance program as authorized by s. 49.45 (30e) (b) 4., Stats., as created by 2003 Wisconsin Act 33. The department anticipates that the rules created in this new initiative will complement services provided by existing community support programs under s. 51.421, Stats., by making a fuller array of mental health services potentially available to those in need in each county. The department further anticipates that these new rules will

allow for the creation of a broad range of flexible, consumer–centered, recovery oriented psychosocial services to both children and adults, including elders, whose psychosocial needs require more than outpatient therapy, but less than the level of services provided by existing community support programs. Certified community–based psychosocial programs that meet the requirements of s. 49.45 (30e), Stats., and proposed ch. HFS 36 may be fully or partially funded by medical assistance with county match. These programs may also coordinate with other existing funding sources.

Before the effective date of the permanent rule for which this Statement of Scope is being issued, the department as authorized under 2003 Wisconsin Act 33, s. 9124 (10m), may issue substantially identical rules as an emergency order.

Statutory authority

The Department’s statutory authority to create rules relating to community mental health is under ss. 49.45 (30e) and 51.42 (7) (b), Stats.

Staff time required

Estimated hours of staff time to draft the rules – 100 staff hours. An advisory committee will provide opportunities for consumer and provider input to the drafting process.

Insurance

Subject

Regarding Section Ins 17.01 (3), 17.28 (6), Wis. Adm. Code, relating to annual patients compensation fund and mediation fund fees for fiscal year starting July 1, 2004.

Objective of the rule. To establish the annual fees which participating health care providers must pay to the patients compensation fund as required by statute for the fiscal year starting July 1, 2004.

Policy analysis

Existing policies are as set forth in the statutes cited in the next section and in the rules themselves; no new or alternate policies are contemplated at this time.

Statutory authority

Sections 601.41 (3), 655.004, 655.27 (3) and 655.61, Stats.

Staff time required

40 hours estimated state employee time to promulgate these rules; other resources will include the review and recommendation of the board’s actuarial committee based on the analysis and recommendations of the fund’s actuaries and the director of state courts.

Natural Resources

Subject

Chapters NR 20 pertaining to fishing regulations on inland waters and NR 23 pertaining to fishing regulations on Wisconsin–Michigan boundary waters.

Policy analysis

The Department is beginning the administrative process of developing fishing regulation changes that we anticipate recommending for the 2004 Spring Fish and Wildlife Rules Hearings.

A variety of fishing regulation changes have been proposed by Fisheries and Law Enforcement staff and approved through joint review, which are being developed for inclusion

in the 2003 Spring Hearings. At this time, the Bureau of Fisheries Management and Habitat Protection is in the process of reviewing several rule proposals from local fisheries staff. The FH Bureau will then review the proposals with the Bureaus of Law Enforcement and Legal Services. At most, we anticipate recommending eight statewide rule change proposals and 20 local proposals.

These proposed fishing regulation changes would affect and be of interest to most anglers in the state, and could be of interest to those in the tourism industry involved in fishing.

Statutory authority

Sections 29.014, 29.041, and 227.11, Stats.

Staff time required

Approximately 220 hours will be needed by the Department.

Revenue

Subject

Section Tax 1.12, relating to electronic funds transfer.

Objective of the rule:

- Create a provision specifying that payments of certain installment agreements on overdue tax accounts are required to be made by electronic funds transfer (“EFT”).
- Update examples, and update notes to list current mailing addresses, and reflect the renumbering of a reference for the definition of stadium tax.

Policy analysis

The Department is using a procedure requiring electronic funds transfer for payments of certain installment agreements on overdue tax accounts. If the rules are not changed, they will be incomplete in that they will not reflect current Department procedure.

Statutory authority

Section 227.11 (2) (a), Stats.

Staff time required

The department estimates it will take approximately 60 hours to develop this rule order.

Transportation

Subject

Objective of rule. This rule making will amend ch. Trans 250, relating to oversize and overweight permits for vehicles and loads, to effectuate s. 2604 of 2003 Wis. Act 33 that allows DOT to establish by administrative rule the additional fee to be charged for using the Department telephone call–in procedure or the Internet procedure to apply for oversize or overweight permits.

Policy analysis

2003 Wis. Act 33 replaces the statutorily–specified \$5 for using the telephone call–in procedure with the authority of DOT to establish the fee by rule for both the telephone call–in and Internet procedures.

Statutory authority

Section 348.25 (8) (e), Stats.

Staff time required

20 hours.

Transportation

Subject

Objective of the Rule. This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding 7 highway segments to the network. The actual segments being proposed are:

STH 25 from USH 8 to STH 48

STH 35 from USH 63 at Hager City to USH 10 in Prescott

CTH "E" from STH 35 to USH 10

STH 78 from Argyle to Mt. Horeb

STH 81 from STH 78 in Argyle to CTH "N" W. of STH 78

CTH "N" from STH 81 W. of Argyle to CTH "F"

CTH "F" from CTH "N" to STH 78 in Blanchardville

Policy analysis

Federal law requires the Department of Transportation to

react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a requests from Indianhead Holsteins, Ltd., in Barron, WI, Bill Schroeder, Pierce County Board Supervisor, and Dearth Livestock, Inc., in Blanchardville to add these highway segments.

Statutory authority

Section 348.07 (4), Stats.

Staff time required

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

Submittal of rules to legislative council clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On September 29, 2003, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory Authority: ss. 93.07 (1) and 96.04, Stats.

This rule modifies Wisconsin's current corn marketing order, ch. ATCP 143. This rule increases marketing order assessments, and changes the coverage of the marketing order. This rule must be approved in a referendum of affected producers before it can take effect. Producers affected by the current marketing order or by the proposed changes will be eligible to vote in the referendum.

Agency Procedure for Promulgation

The department will hold public hearings on November 17, 18 and 19, 2003.

The Agricultural Development Division is primarily responsible for this rule.

Contact

Noel Favia
(608) 224-5140

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

Rule Submittal Date

On September 23, 2003, the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), and 443.12 (1), Stats.

The proposed rule amends s. A-E 6.05 (10), relating to increasing the penalties for cheating on examinations.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 13, 2003 at 1:00 p.m. at 1400 East Washington Avenue, Madison, WI 53702.

Contact

Joel Garb, Paralegal, Office of Administrative Rules,
(608) 261-2385.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

Rule Submittal Date

On September 23, 2003, the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), and 443.09, Stats.

The proposed rule affects ch. A-E 4, relating to increasing the penalties for cheating on examinations. The rule will authorize the board to prohibit examinees from writing for as many as the next six scheduled examinations after the examination during which the cheating occurred. The number of examinations the examinee would be prohibited from writing would be determined by the board and based upon the seriousness of the cheating offense.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 14, 2003 at 9:30 a.m. at 1400 East Washington Avenue, Madison, WI 53702.

Contact

Joel Garb, Paralegal, Office of Administrative Rules,
(608) 261-2385.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

Rule Submittal Date

On September 23, 2003, the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), and 443.10, Stats.

The proposed rule will repeal and recreate s. A-E 4.09, relating to specific application documentation for applicants by comity and applicants for initial licensure.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 14, 2003 at 9:30 a.m. at 1400 East Washington Avenue, Madison, WI 53702.

Contact

Joel Garb, Paralegal, Office of Administrative Rules,
(608) 261-2385.

Commerce**Rule Submittal Date**

On September 29, 2003, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis Prepared by the Department of Commerce

This rule revises ch. Comm 21 of the Uniform Dwelling Code, relating to exiting from small dwellings and rail spindle spacing.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for October 28, 2003.

The Safety and Buildings Division is the agency responsible for this rule.

Contact

Duane Hubeler
(608) 266-1390

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board**Rule Submittal Date**

On September 23, 2003, the Examining Board of Marriage and Family Therapy, Professional Counseling and Social Work submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), and 457.03 (1), Stats.

This rule revises ch. MPSW 3, relating to a foreign degree to be equivalent to a degree from an accredited school in the United States.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 20, 2003 at 9:30 a.m. at 1400 East Washington Avenue, Madison, WI 53702.

Contact

Joel Garb, Paralegal, Office of Administrative Rules,
(608) 261-2385.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board**Rule Submittal Date**

On September 30, 2003, the Examining Board of Marriage and Family Therapy, Professional Counseling and Social Work submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), and 457.03 (1), Stats.

The proposed order amends s. MPSW 4.01 (3), relating to supervised pre-certification and pre-licensure social work.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 20, 2003 at 9:30 a.m. at 1400 East Washington Avenue, Madison, WI 53702.

Contact

Joel Garb, Paralegal, Office of Administrative Rules,
(608) 261-2385.

Pharmacy Examining Board**Rule Submittal Date**

On September 29, 2003, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

This rule revises ch. Phar 6, relating to the professional service area requirements where the pharmacist is absent.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 11, 2003 at 9:00 a.m. at 1400 East Washington Avenue, Madison, WI 53702.

Contact

Joel Garb, Paralegal, Office of Administrative Rules,
(608) 261-2385.

Public Service Commission**Rule Submittal Date**

On October 1, 2003, the Public Service Commission submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

This rule amends ch. PSC 135, relating to adopting recent changes to the federal pipeline safety regulations.

Agency Procedure for Promulgation

A public hearing will be held on October 27, 2003, at 9:00 a.m. at the Public Service Commission building at 610 North Whitney Way, Madison, Wisconsin.

The Natural Gas Division of the Commission is the organizational unit responsible for the promulgation of the rule.

Contact

Daniel L. Sage, Natural Gas Division
(608) 267-9486

Transportation**Rule Submittal Date**

On September 29, 2003, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

This rule affects ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on specified highways.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 7, 2003.

The Division of Transportation Infrastructure Development, Bureau of Highway Operations is the unit responsible for promulgation of the proposed rule.

Contact

Julie A. Johnson, Paralegal

(608) 267-3703

Veterinary Examining Board

Rule Submittal Date

On September 29, 2003, the Veterinary Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

This rule creates s. VE 7.02 (5) (d), relating to the delegation of veterinary medical services to unlicensed assistants.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 12, 2003 at 11:30 a.m. at 1400 East Washington Avenue, Madison, WI 53702.

Contact

Joel Garb, Paralegal, Office of Administrative Rules, (608) 261-2385.

Workforce Development

Rule Submittal Date

On September 25, 2003, the Department of Workforce

Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 111.375 (1) and 230.89 (1), Stats., as affected by 2003 Wis. Act 33; s. 230.45 (1e) (d), Stats., as created by 2003 Wis. Act 33; and ss. 103.005 (1), 106.50 (1s), 106.52 (2), and 227.11, Stats.

This rule affects chs. DWD 218, 220, 221, 224, and 225, relating to the transfer of personnel commission responsibilities to the equal rights division and other revisions to civil rights rules.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 27, 2003.

The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

Contact

Elaine Pridgen
(608) 267-9403

Email: elaine.pridgen@dwd.state.wi.us

Rule–making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 03 –094]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to amend ch. ATCP 143, relating to production and sale of corn. The department will hold three hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until December 15, 2003, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Development, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224–5140. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by October 30, 2003, by writing to Noel Favia, Division of Agricultural Development, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–5140. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearings are scheduled at:

Monday, November 17, 2003, 1:00 p.m. until 3:00 p.m.

Lafayette County Courthouse
646 Main Street
County Board Room
Darlington, WI 53530
Handicapped accessible

Tuesday, November 18, 2003, 1:00 p.m. until 3:00 p.m.

WDATCP State Office Building
2811 Agriculture Drive
Madison, WI 54708–8911
Handicapped accessible

Wednesday, November 19, 2003, 1:00 p.m. until 3:00 p.m.

Portage County Courthouse
1516 Church Street
Stevens Point, WI 54481
Handicapped accessible

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07 (1) and 96.04, Stats.

Statutes interpreted: ch. 96, Stats.

This rule modifies Wisconsin’s current corn marketing order, ch. ATCP 143, Wis. Adm. Code. This rule increases marketing order assessments, and changes the coverage of the marketing order. This rule must be approved in a referendum of affected producers before it can take effect. Producers

affected by the current marketing order or by the proposed changes will be eligible to vote in the referendum.

Background

Under ch. 96, Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) may adopt marketing orders for agricultural commodities. Marketing orders impose assessments on affected producers. Assessments may be used to finance market development, research and educational programs. Affected producers must, by referendum, approve the marketing order. A marketing board, elected by affected producers, collects and spends assessments for purposes authorized in the marketing order. DATCP regulates marketing boards to ensure that they comply with the law and the marketing order.

Current Corn Marketing Order

DATCP adopted the current corn marketing order in 1983, and has not amended the marketing order since then. Under the current marketing order, “affected producers” must pay an assessment of 1/10th of one cent per bushel on corn produced in this state, if that corn is sold into commercial channels in this state or another state.

Handlers who buy corn from “affected producers” must collect the assessments from the producers, and remit payment on behalf of the producers to the Corn Marketing Board. Handlers must keep records, and report to each producer the assessments collected from that producer and remitted to the marketing board. “Affected producers” who sell corn to an out–of–state handler must pay assessments to the marketing board (if the out–of–state handler fails to collect and remit the assessments on behalf of the producers).

The Corn Marketing Board is a 9–member board elected by “affected producers” who are subject to assessment under the corn marketing order. “Affected producers” are currently defined as producers who grow corn in this state and sell that corn in commercial channels this state or another state. Members of the Corn Marketing Board are elected to represent 9 separate districts in the state. Board members must reside in the districts they represent (even if they grow corn in another district). “Affected producers” must reside in the district in which they vote (even if they grow corn in another district).

Proposed Changes

Increased Assessment

This rule increases the assessment paid by “affected producers” under the corn marketing order, from 1/10th of one cent per bushel (current assessment) to 1/2 cent per bushel (proposed assessment).

Producers Subject to Assessment

This rule changes the basis on which assessments are collected, and changes the set of producers who are subject to assessment. Under this rule, an “affected producer” must pay an assessment on corn that the producer sells in this state, regardless of where the corn is grown. As a result of this change, a producer who grows corn in this state for sale in another state will no longer pay assessments on that corn. A producer who grows corn in another state, for sale in this state, will for the first time pay assessments on that corn.

Exemptions

Current rules exempt some corn from assessment. This rule retains and clarifies the current exemptions. Under this rule, an affected producer is not required to pay assessments on any of the following:

- Corn that the producer produces for his or her own use (does not sell).
- Corn sold for seed.
- Corn sold directly to a buyer, other than a grain dealer who is required to be licensed under ch. 126, Stats., who uses the corn to feed the buyer's own livestock.

Handler Obligations

Under this rule, handlers in this state must collect assessments on grain that the handlers purchase in this state from in-state or out-of-state producers, and must remit those assessments to the marketing board on behalf of those affected producers. This rule clarifies that the handler's obligation to the marketing board accrues when the handler takes title to the grain, regardless of the date of grain pricing or payment, and regardless of the form in which the handler pays the affected producer for the grain.

Under this rule, as under the current rule, the handler must pay an assessment to the marketing board within 15 days after the end of the month in which the handler's obligation to the marketing board accrues. Under this rule, as under the current rule, DATCP or the marketing board may require the handler to provide relevant records and reports to DATCP or the marketing board.

Under this rule, as under the current rule, a handler must report to an affected producer each assessment that the handler collects from that producer. Handlers typically include these reports in their grain transaction settlement statements to producers. This rule clarifies that a handler who reports assessments as part of the normal settlement reporting process is not required to provide a separate annual statement to an affected producer.

Marketing Board Elections

This rule changes voter eligibility requirements in marketing board elections, to correspond with changes in marketing order coverage. Under this rule, all producers who are required to pay assessments to the marketing board will be eligible to vote in marketing board elections. Thus, in-state and out-of-state producers who pay assessments on corn that they sell in this state will be eligible to vote in marketing board elections, and run for election to the marketing board. Producers who grow corn in this state, but sell all of their corn in other states, will no longer pay assessments as "affected producers" and hence will not be eligible to participate in marketing board elections.

Under this rule, an "affected producer" may vote or run for election in a marketing board district in which the producer resides or, if the "affected producer" resides outside this state, in a district where the "affected producer" sells corn in this state. An out-of-state producer who sells corn in more than one district in this state may vote and run for election in only one of those districts.

This rule clarifies, per current provisions of ch. ATCP 140, Wis. Adm. Code, that the marketing board may reapportion districts only with the approval of DATCP secretary. This rule clarifies, but does not substantially alter, other procedures for nominating, electing and ensuring the eligibility of marketing board members.

Fiscal Estimate

This rule would have no fiscal impact on DATCP or local units of government, beyond the estimated \$24,000 cost of

adopting the rule. The Wisconsin Corn Promotion Board (CPB) would reimburse this cost.

This rule would increase revenues to the Wisconsin Corn Promotion Board (CPB). The CPB currently collects approximately \$183,000 per year in producer assessments. Under this rule, CPB would collect approximately \$915,000 per year in producer assessments.

Initial Regulatory Flexibility Analysis

This rule would affect approximately 23,000 corn producers, and approximately 300 handlers who collect and remit marketing order assessments on behalf of corn producers. Many of these producers and handlers are "small businesses."

This rule would increase producer assessments, from an average current assessment of approximately \$8 per producer per year to an average proposed assessment of approximately \$40 per producer per year. Actual assessment amounts would vary by producer. Some producers who currently pay assessments would no longer pay assessments under this rule (producers who grow corn in this state but sell all of their corn out-of-state). Other producers would pay assessments for the first time under this rule (out-of-state producers who sell corn in this state).

This rule must be approved in a referendum of affected producers. Producers who are affected either by the current rule, or by the proposed rule, will be allowed to vote in the referendum. As under the current rule, any producer who pays assessments under the proposed rule would have the option of demanding a refund of those assessments from the CPB. The CPB would be required to refund producer assessments upon demand, as under the current rule.

This rule would not have a large impact on handlers, although the change in rule coverage could require some handlers to collect and remit assessments for a slightly different set of producers. This could require some initial adjustment in billing and recordkeeping operations.

Notice of Hearing

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

[CR 03-087]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors in Wis. Stat. ss. 15.08 (5) (b), 227.11 (2), and 443.10, and interpreting s. 442.10, Stats the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors will hold a public hearing at the time and place indicated below to consider an order to repeal and recreate s. A-E 4.09 as relating to specific application documentation for applicants by comity and applicants for initial licensure.

Hearing Date, Time and Location

Date: **November 14, 2003**
 Time: 9:30 A.M.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing,

Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by November 24, 2003, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), and 443.10.

Statutes interpreted: s. 443.10.

Current rules define contents of applications for licensure. Section A-E 4.09 provides that applications for licensure will include specific information and documentation that will verify the applicant's education, experience and training. The current rules do not provide specific application requirements for different types of applicants. For example, applications for original licensure now require the same documentation as applications by comity. Because applicants by comity are already licensed and practicing in another state, the documentation needed by the board to determine their eligibility for licensure in Wisconsin is not the same as that needed for an applicant for initial licensure.

TEXT OF RULE

SECTION 1 A-E 4.09 is repealed and recreated to read:

A-E 4.09 Application contents. (1) An application for original licensure shall include all of the following:

(a) Transcripts or apprenticeship records verifying the applicant's education and training.

(b) References from at least 5 individuals having personal knowledge of the applicant's experience in professional engineering, 3 of whom are registered professional engineers.

(c) A chronological history of the applicant's employment.

(d) Any additional data, exhibits or references showing the extent and quality of the applicant's experience that may be required by the professional engineer section.

(2) An application for licensure by comity from another state shall include all of the following:

(a) Verification of licensure submitted directly from all states, territories or provinces of Canada where the applicant is or has been licensed, including a statement regarding any disciplinary actions taken.

(b) Any additional data, exhibits or references showing the extent and quality of the applicant's experience that may be required by the professional engineer section.

Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Notice of Hearing

Commerce (Uniform Dwelling Code, Chs. Comm 20-25) [CR 03-097]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74 Stats., the Department of Commerce will hold a public hearing on proposed rules relating to Exiting from Small Dwellings and Rail Spindle Spacing.

The public hearing will be held as follows:

Tuesday, October 28, 2003 @ 10:00 AM

Tommy G. Thompson Commerce Center

Conference Room 3C (Third Floor)

201 West Washington Avenue, Madison, WI

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until Friday, November 14, 2003, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Duane Hubeler, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at dhubeler@commerce.state.wi.us

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis of Proposed Rules

Statutory Authority: ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74 Stats.

Statutes Interpreted: ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74 Stats.

Under the statute sections listed above, the Department of Commerce has the responsibility to adopt rules that establish standards for the construction of 1- and 2-family dwellings. During the last biennial review of these rules, the department developed a proposal to decrease the maximum open space between rail spindles on stairways and other elevated areas such that a 4-inch sphere cannot fit through to be in agreement with national standards as specified under s. 101.63 (1). At the request of the Chair of the Assembly Committee on Housing, the Commerce Secretary withdrew that proposal pending further study by the Uniform Dwelling Code Council. After studying additional cost and safety data, the UDC Council unanimously reaffirmed its recommendation to adopt these rules.

Also during the last review, the department developed less stringent rules for exiting from small dwellings. After implementation, the department became aware that the size threshold had been set too low for many cabins located at campgrounds. The department believes the size threshold should be increased to avoid imposing a burden on such cabins. The department believes this change will not adversely affect safety in those dwellings.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at:

www.commerce.state.wi.us/SB/SB-HomePage.html.

Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at rward@commerce.state.wi.us, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Fiscal Estimate

The proposed rule change will have an effect on two specific areas of dwelling design. Both issues are covered under the current code but with different dimensions. There

will be no impact on municipal inspections and no fiscal impact on any unit of government.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Home builders and campgrounds will be affected by these rules.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

There are no reporting, bookkeeping or other similar procedures required for compliance with the rules.

3. Types of professional skills necessary for compliance with the rules.

There are no additional professional skills necessary for compliance with the rules.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Notice of Hearing

Health and Family Services (Management and Technology and Strategic Finance— Chs. HFS 1—)

[CR 03-085]

Notice is hereby given that, pursuant to s. 227.11 (2) (a), Stats., the Department of Health and Family Services will hold a public hearing to consider proposed permanent rules creating ch. HFS 2, relating to Department recoupment of program benefit overpayments from program recipients.

Hearing Information

The public hearing will be held:

Wednesday, November 5, 2003 at 1:00 p.m.

State Office Building

1 West Wilson St.

Room B145

MADISON

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available on site.

Analysis Prepared by the Department of Health and Family Services

The Department proposes to create a new chapter of administrative rules, ch. HFS 2, that addresses the Department's ability to recoup overpayments the Department made to recipients of Department program benefits.

Under section 16.51 (4) of the Wisconsin Statutes, the Wisconsin Department of Administration is responsible for the collection of all monies due the state. In the State Accounting Manual, the Department of Administration has, in turn, assigned to each State agency the responsibility to establish and document internal procedures to assure that all accounts are recorded, billed and collected or written-off in

an efficient and timely manner. This includes the return of benefits that were overpaid to recipients.

To date, the Department of Health and Family Services has relied on its written overpayment policy to authorize the procedure the Department uses to recoup benefit payments. In 1999, in *Mack vs. DHFS*, 231 Wis. 2nd 844, 605 N.W. 2nd 651 (Ct. App. 1999), the Wisconsin Court of Appeals found that although the Department has the right to recover erroneous payment of public funds, the Department could not employ its recoupment process without promulgating the process as an administrative rule. Therefore, the Department proposes to promulgate its procedure for recouping overpayments as ch. HFS 2.

Contact Person

The initial proposed rules upon which the Department is soliciting comments and which will be the subject of this hearing are posted at the Department's administrative rules website at: www.adminrules.wisconsin.gov

To find out more about the hearing, or to comment on the proposed rule, please write or phone:

Amy Korpady

Division of Management and Technology

P.O. Box 7850

Madison, WI 53707-7850

608-266-2708

korpaaa@dhfs.state.wi.us

If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter, or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rule received at the above address no later than Tuesday, November 10, 2003, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

The purpose of the proposed ch. HFS 2 is to increase the Department's ability to implement its policy for recouping overpayments of benefits to individuals and other accounts receivable. The Department assumes that, in most circumstances, recoupments that result from this policy will be realized as GPR-earned.

One specific type of overpayment involves payments made for child welfare services through the Bureau of Milwaukee Child Welfare. The Department estimates that this rule will result in an annual increased recoupment of these overpayments of \$30,000 to \$45,000. It is likely that the Department could generate additional revenues from recoupment of benefits in other DHFS programs as well. The amount of revenue from recoupments cannot be estimated.

Initial Regulatory Flexibility Analysis

The rule changes will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Notice of Hearing

Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board

[CR 03- 090]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional

Counseling and Social Worker Examining Board in ss. 15.08 (5) (b), 227.11 (2), and 457.03 (1), Stats., and interpreting s. 457.08, Stats., the Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. MPSW 3.01 (2), 3.05 (2), 3.07 (2) and 3.09 (2), relating to a foreign degree to be equivalent to a degree from an accredited school in the United States.

Hearing Date, Time and Location

Date: **October 23, 2003**
 Time: 9:30 A.M.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **November 3, 2003**, to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.085 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Statutes interpreted: s. 457.08, Stats.

Under current requirements, applicants for social worker certification or licensure must have earned a social work degree from a school accredited by the Council on Social Work Education. Applicants otherwise qualified are prevented from obtaining Wisconsin certification or licensure if the applicant obtained a degree in another country. The Council on Social Work Education has a process for determining equivalency of degrees, and in fairness to graduates of foreign schools, the Social Worker Section wishes to rely on that process for accepting equivalent degrees.

Sections 1, 2, 3 and 4 amend the rules to permit the Social Worker Section to accept from applicants for social worker certification or licensure a foreign degree determined by a national accrediting organization to be equivalent to a degree from an accredited school.

Text of Rule

SECTION 1. MPSW 3.01 (2) is amended to read:

MPSW 3.01 (2) Verification that the school or program which awarded the social work degree was accredited by, or a pre-accreditation program of, ~~the council on social work education~~ Council on Social Work Education (CSWE), at the time the applicant graduated from the program or school, or that a degree awarded by a foreign institution of higher learning has been determined by the CSWE to be equivalent to a CSWE-accredited program.

SECTION 2. MPSW 3.05 (2) is amended to read:

MPSW 3.05 (2) Verification that the school or program which awarded the social work degree was accredited, or a ~~pre-accredited pre-accreditation~~ pre-accredited program of, ~~the council on social work education~~ Council on Social Work Education

(CSWE), at the time the applicant graduated from the program or school, or that a degree awarded by a foreign institution of higher learning has been determined by the CSWE to be equivalent to a CSWE-accredited program.

SECTION 3. MPSW 3.07 (2) is amended to read:

MPSW 3.07 (2) Verification that the school or program which awarded the social work degree was accredited, or a pre-accreditation program of, ~~the council on social work education~~ Council on Social Work Education (CSWE), at the time the applicant graduated from the program or school, or that a degree awarded by a foreign institution of higher learning has been determined by the CSWE to be equivalent to a CSWE-accredited program.

SECTION 4. MPSW 3.09 (2) is amended to read:

MPSW 3.09 (2) Verification that the school or program which awarded the social work degree was accredited, or a pre-accreditation program of, ~~the council on social work education~~ Council on Social Work Education (CSWE), at the time the applicant graduated from the program or school, or that a degree awarded by a foreign institution of higher learning has been determined by the CSWE to be equivalent to a CSWE-accredited program.

Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Notice of Hearing

Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board [CR 03-098]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 457.03, Stats., and interpreting s. 457.08, Stats., the Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. MPSW 4.01 (3) (a) to (c), relating to supervised pre-certification and pre-licensure social work.

Hearing Date, Time and Location

Date: **November 20, 2003**
 Time: 9:30 A.M.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by

November 30, 2003, to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: sections 15.08 (5) (b), 227.11 (2) and 457.03, Stats.

Statute interpreted: section 457.08, Stats.

Section 1 revises language describing the activities to be engaged in by a person acquiring supervised social work experience, for clarification.

Text of Rule

SECTION 1. MPSW 4.01 (3) is amended to read:

(3) A period of supervised practice of social work shall include, but not be limited to, practice in each of the following activities:

(a) Evaluation and assessment of difficulties in psychosocial functioning of a group or another individual;

(b) Developing plans or policies to alleviate those difficulties, ~~and either carrying out the plan or referring individuals to other qualified resources for assistance;~~

(c) Intervention ~~planning~~, which may include psychosocial evaluation and counseling of individuals, families and groups; advocacy; referral to community resources; and facilitation of organizational change to meet social needs.

Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

**Notice of Hearing
Pharmacy Examining Board
[CR 03-096]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2), and 450.02, Stats., and interpreting s. 450.09, Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Phar 6.04 (3) (a) (intro.); and create s. Phar 6.04 (3) (c), relating to the professional service area requirements where the pharmacist is absent.

Hearing Date, Time and Location

Date: **November 11, 2003**
Time: 9:00 A.M.
Location: 1400 East Washington Avenue
Room 179A
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison,

Wisconsin 53708. Written comments must be received by **November 25, 2003**, to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3), Stats.

Statutes interpreted: s. 450.09, Stats.

Modifications of s. Phar 6.04 will allow a pharmacy to remain open without placement of physical barriers during temporary periods of absence from a pharmacy by a pharmacist under certain conditions, and sets forth permissible technician activities under s. Phar 7.015 during the temporary absence of a pharmacist. Currently, s. Phar 6.04 (3) (a) 1. and 2. provide that in the absence of a pharmacist a pharmacy may convert to a non-prescription or sundry outlet if certain requirements are met, in part the placement of a physical barrier. Modifying the rule will allow certain limited interactions between pharmacy staff and patients, as well as the carrying on of certain allowable pharmacy staff functions in the absence of a pharmacist. Patients will benefit by increased availability of pharmacy services.

Section 1 amends s. Phar 6.04 (3) (a) (intro.) and adds a provision allowing a pharmacy in the absence of a pharmacist to continue to operate without converting to a sundry outlet if specific conditions are met.

Section 2 creates s. Phar 6.04 (3) (c) specifying the conditions under which a pharmacy may continue to operate in the absence of a pharmacist without converting to a sundry outlet.

Text of Rule

SECTION 1. Phar 6.04 (3) (a) (intro.) is amended to read:

Phar 6.04 (3) PROFESSIONAL SERVICE AREA REQUIREMENTS WHERE PHARMACIST IS ABSENT. (a) (intro.) A **Except as provided in par. c., if no pharmacist is present in the professional service area,** a pharmacy may convert to a non-prescription or sundry outlet ~~without a pharmacist present~~ if the following requirements ~~of the professional service area~~ are met:

SECTION 2. Phar 6.04 (3) (c) is created to read:

Phar 6.04 (3) (c) Where no pharmacist is present in the professional service area a pharmacy is not required to convert to a non-prescription or sundry outlet if the following requirements are met:

1. The pharmacist is absent for a time period of one half hour or less.
2. The pharmacist must be accessible for communication with the remaining pharmacy staff by phone, pager or other device.
3. The pharmacy must indicate that the pharmacist is not available in the professional service area and indicate the period of absence and the time of the pharmacist's return.
4. Pharmacy technicians may only perform duties allowed by s. Phar 7.015 (2).
5. Pharmacy technicians may not perform the remaining prohibited activities listed in s. Phar 7.015 (3) or (4).

Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to

determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Notice of Hearing
Public Service Commission
[CR 03-099]

Hearing Date: Monday, October 27, 2003 – 9:00 a.m.

Hearing Location: Public Service Commission, 610 North Whitney Way, Madison, WI

The Commission proposes to amend s. PSC 135.019 (3) of the Wisconsin Administrative Code to incorporate by reference recent changes to the federal pipeline safety regulations.

NOTICE IS GIVEN that a hearing will be held beginning on October 27, 2003, at 9:00 a.m. in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, and continuing at times to be set by the presiding Administrative Law Judge. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the docket coordinator listed below.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the docket coordinator listed below.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02 (1) and (3), 196.745 and 227.11, Stats.

Statute interpreted: s. 196.745

Under an agreement between the federal Department of Transportation, Office of Pipeline Safety, the Commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 CFR Parts 192, 193 and 199. As part of the agreement, the Commission agrees to adopt those parts of the federal code that apply to pipeline safety. The Commission last promulgated revisions to ch. PSC 135 in 1999. Since then, the federal DOT has adopted several final rules which revise the pipeline safety code. This amendment adopts those federal rules and incorporates them by reference. The federal changes include:

Federal Amendment 192-86, relating to qualification of pipeline personnel. This rule took effect August 27, 1999.

Federal Amendment 192-87, relating to determining the extent of corrosion on gas pipelines. This rule took effect on November 22, 1999.

Federal Amendment 192-88, relating to pipeline safety: gas and hazardous liquid pipeline repair. This rule took effect on January 13, 2000.

Federal Amendment 192-89, relating to underwater abandoned pipeline facilities. This rule took effect on October 20, 2000.

Federal Amendment 192-90, relating to qualification of pipeline personnel corrections. This rule took effect on August 20, 2001.

Federal Amendment 192-77, relating to safety in high consequence areas for gas transmission pipelines. This rule took effect September 5, 2002.

Federal Amendment 193-17, relating to incorporation of standard NFPA 59A in the liquefied natural gas regulations. This rule took effect March 31, 2000.

Federal Amendment 199-19, relating to drug and alcohol testing for pipeline facility employees. This rule took effect September 11, 2001.

Of the federal rules, the most significant change for natural gas public utilities in this state relates to the qualifications of pipeline personnel. This federal rule requires pipeline operators to develop and maintain a written qualification program for individuals performing covered tasks on pipeline facilities. The intent of this qualification rule is to ensure a qualified work force and to reduce the probability and consequence of incidents caused by human error.

A statement of scope on this rule was approved by the Commission on December 11, 2001, and was published in the Wisconsin Administrative Register on December 31, 2001.

Text of Proposed Rule

PSC 135.019 (1) The federal department of transportation, office of pipeline safety, pipeline safety standards, as adopted through ~~May 20, 1999~~ [revisor inserts date], and incorporated in 49 CFR Parts 192, 193 and 199, including the appendices, are adopted as state pipeline safety standards and incorporated by reference into this chapter.

Initial Regulatory Flexibility Analysis

Natural gas utilities may experience modest increases in the cost of complying with new pipeline safety regulations due to increased requirements for operator qualifications. The proposed rules will have no effect on small business.

Fiscal Estimate

This rule has no fiscal impact.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the docket coordinator listed below.

Questions regarding this matter may be directed to docket coordinator Thomas Stemrich at (608) 266-2800.

Notice of Hearing
Transportation
[CR 03-093]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1) and 348.07(4), Stats., interpreting s. 348.07(4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of chapter Trans 276, Wisconsin Administrative Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

November 7, 2003 at 11:00 a.m.

Portage County Highway Department

800 Plover Road

Plover, Wisconsin

(Parking is available for persons with disabilities)

The public record on this proposed rule making will be held open until close of business on the date of the hearing to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such written comments

should be submitted to Ashwani K. Sharma, Traffic Operations Engineer, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, Wisconsin, 53707-7986.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.16 (1) and 348.07 (4), Stats.

Statute Interpreted: s. 348.07(4), Stats.

General Summary of Proposed Rule.

This proposed rule creates Trans 276.07(35m), Wisconsin Administrative Code, to add one segment of highway to the designated highway system established under s. 348.07(4), Stats. The actual highway segment that this proposed rule

adds to the designated highway system is:

Hwy.	From	To
CTH "B"	USH 10	IH 39

The long trucks to which this proposed rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit: A single vehicle with an overall length in excess of 40 feet, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

The effect of this proposed rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highways. Specifically, this means there will be no overall length limitation for a tractor-semitrailer combination, a double bottom or an automobile haulaway on the affected highway segments. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor-semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segments provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on these highway segments provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

¹ The proposed rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

² 45-foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

Fiscal Impact

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district or sewerage district.

Initial Regulatory Flexibility Analysis

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to the office of the State Traffic Engineer, P. O. Box 7986, Room 501, Madison, Wisconsin, 53707-7986, telephone (608) 266-1273. For questions about this rule making, please call Ashwani Sharma, Traffic Operations Engineer at (608) 266-1273. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing Veterinary Examining Board [CR 03-095]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Veterinary Examining Board in ss. 15.08 (5) (b), 227.11 (2), and 453.03, Stats., and interpreting Ch. 453, Stats., the Veterinary Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. VE 7.02 (5) (d) relating to the delegation of veterinary medical services to unlicensed assistants.

Hearing Date, Time and Location

Date: **November 12, 2003**

Time: 11:30 A.M.

Location: 1400 East Washington Avenue

Room 179A

Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **November 30, 2003**, to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

Statutes interpreted: Chapter 453, Stats.

Persons licensed to practice chiropractic or physical therapy are frequently providing those services to animals – often without referral or supervision by a licensed veterinarian. Additionally, veterinarians are often asked by clients to refer animals to chiropractors or physical therapists for care. Under current rules, those services may be delegated under immediate on-premises supervision of a veterinarian, which means that the veterinarian must either stand by where the animal is kept while the services are provided, or that the animals are brought to the veterinary clinic. The former

alternative is expensive and wasteful. The latter alternative is difficult or impossible to accomplish in the case, for example, of an equine patient. The proposed rule would legitimize what is already occurring.

Text of Rule

SECTION 1. VE 7.02 (5) (d) is created to read:

VE 7.02 (5) (d) Medical services involving muscular or skeletal manipulation provided there is a written and signed protocol incorporating the following elements:

1. A statement that records of the intervention shall be kept in the patient's permanent file maintained by the delegating veterinarian;
2. A statement that the unlicensed provider is or is not covered by liability insurance;
3. Length and number of treatments;
4. Therapy limitations;
5. Location of the premises where the treatment is to be provided;
6. Address and telephone number of the unlicensed provider; and
7. Signatures of the veterinarian, the unlicensed provider and the client.

Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

Initial Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Notice of Hearing Workforce Development (Civil Rights, Chs. DWD 210 – 225)

[CR 03–092]

NOTICE IS HEREBY GIVEN that pursuant to ss. Sections 111.375 (1) and 230.89 (1), Stats., as affected by 2003 Wisconsin Act 33; s. 230.45 (1e) (d), Stats., as created by 2003 Wisconsin Act 33; and ss. 103.005 (1), 106.50 (1s), 106.52 (2), and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider changes affecting chs. DWD 218, 220, 221, 224, and 225, relating to the transfer of Personnel Commission responsibilities to the Equal Rights Division and other revisions to civil rights rules.

Hearing Information

Monday, October 27, 2003 at 1:30 p.m.

GEF 1 Building, Room B103
201 East Washington Avenue
Madison

Visitors to the GEF 1 Building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is wheelchair accessible via a ramp from the corner of Webster and East Washington.

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. If you have special needs or circumstances that may make communication or accessibility difficult at the hearings, please call (608) 267–9403 at least 10

days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 111.375 (1) and 230.89 (1), Stats., as affected by 2003 Wisconsin Act 33; s. 230.45 (1e) (d), Stats., as created by 2003 Wisconsin Act 33; and ss. 103.005 (1), 106.50 (1s), 106.52 (2), and 227.11, Stats.

Statutes interpreted: Subchapter II of ch. 111 and subch. III of ch. 230, Stats., as affected by 2003 Wisconsin Act 33; ss. 16.009 (5), 21.80 (7) (b) 1. or 2., 46.90 (4) (b), 50.07 (3) (b), 101.055 (8), 103.10, and 146.997, Stats., as affected by 2003 Wisconsin Act 33; s. 230.45 (1e), Stats., as created by 2003 Wisconsin Act 33; and ss. 103.10, 106.50, 106.52, and 106.54, Stats.

2003 Wisconsin Act 33 abolishes the Personnel Commission and transfers some of its duties to the Wisconsin Employment Relations Commission (WERC) and some of its duties to the Equal Rights Division (ERD) in the Department of Workforce Development. Duties transferred to WERC include appeal of various personnel decisions affecting state employees, arbitration of state employee grievances, and appeals under the county merit system rules. Duties transferred to ERD include processing complaints based on the following:

- Employment discrimination against state employees based on a protected class.
- Violation of the family and medical leave law affecting state employees.
- Retaliation or discrimination against state employees who provide information on conditions in a long–term care facility to the Board on Aging, information on elder abuse to a county agency or state official, or information related to licensing care and service residential facilities to a state official.
- Discrimination against state employees exercising their rights relating to occupational health and safety.
- Retaliatory discipline against state employee health care workers who report a violation of law or a quality of care standard to a supervisor, officer or director of the health care facility, or professionally–recognized accrediting or standard–setting body.
- Violation of reemployment rights of state employees after national guard, state defense force, or public health emergency service.
- Retaliatory discipline against state employee whistleblowers.

The ERD's duties have previously included processing complaints by nonstate employees for all of the issues listed in the above bullet points except whistleblower protection, which only applies to state employees. Before 2003 Wisconsin Act 33, there was a dual system whereby the Personnel Commission processed complaints on these issues by state employees and the ERD processed complaints by nonstate employees. 2003 Wisconsin Act 33 puts sole responsibility for processing complaints by state employees and nonstate employees in the ERD. The ERD has existing procedures for processing the complaints on the issues that have been within its authority:

- Chapter DWD 218 applies to employment discrimination based on a protected class.
- Chapter DWD 225 applies to violations of the family and medical leave law.
- Pursuant to the statutory authorizations for the complaint process on the other issues, they are handled in the same

manner as employment discrimination based on a protected class, and the procedures in Chapter DWD 218 are followed.

2003 Wisconsin Act 33, section 9139, transfers to ERD existing Personnel Commission (PC) rules on duties transferred to ERD and transfers to WERC existing PC rules on duties transferred to WERC. There are 7 PC rules. PC 3, relating to filing appeals, and PC 6, relating to the arbitration option for classification appeals, apply to duties transferred to WERC. PC 2, relating to filing and processing complaints, applies to duties transferred to ERD. PC 1, relating to authorization and general provisions; PC 4, relating to prehearing practice and discovery; PC 5, relating to hearings, decisions, and review; and PC 7, relating to Personnel Commission meetings and records, contain information that applies to duties transferred to both WERC and ERD. This seems to mean that PC 1, 4, 5, and 7 are to be transferred to both WERC and ERD, although these rules also contain information that is relevant only to one agency and not the other.

The department does not believe that adopting the PC rules for duties transferred from the PC is the best way to handle these new responsibilities. The department has well-established procedures for processing complaints against nonstate employers on these same issues (except for whistleblower protection). The department's existing rules can be amended with minor modifications to include complaints filed against state respondents. Adopting the PC rules would result in different procedures for state and nonstate respondents for no logical reason. This dual system would be more difficult to administer and would be confusing to complainants, many of whom are pro se. Adopting the PC rules would also require significant revising to remove irrelevant language on duties that have been transferred to WERC and obsolete language that relates only to the Personnel Commission. The department's existing rules can be modified to include state respondents much more simply. The department does not believe that repealing the PC rules will harm complainants who have a pending complaint against a state respondent. The differences between the ERD and PC rules do not affect substantive rights; they are all procedural. Confusion resulting in failure to comply with proper procedures would be more likely to affect substantive rights.

The department is repealing the PC rules affecting duties within ERD, amending the existing fair employment rules and family and medical leave rules to include state respondents, and creating new whistleblower protection rules. The fair employment and family and medical leave rules are amended to add a definition of agency; add agencies to the definition of respondent; and provide that state employee parties and witnesses who are interviewed or who appear at pre-hearing conferences, conciliation sessions, or hearings receive their full pay and travel expenses in accordance with the state reimbursement schedule. Witnesses summoned by a subpoena who are not state employees receive witness and mileage fees set forth in s. 814.67 (1) (a) and (c), Stats., paid by the person issuing the subpoena. A new rule chapter is created to govern complaints filed under the whistleblower law. The new chapter is similar to the procedures used for fair employment, except department orders under the whistleblower law are not appealable to the Labor and Industry Review Commission. Department findings and orders under the whistleblower law are subject to judicial review under chapter 227, Stats.

The major differences between the old PC procedure and the existing and new ERD procedures include the following:

- Answer. Under the ERD rules, respondents respond in writing to the complaint within a time period set by the

department or the department issues an initial determination based solely on information supplied by the complainant. A formal answer is required within 21 days after the notice of hearing on the merits following an initial determination of probable cause. Under the PC rules, a formal answer was required within 20 days after service of the complaint.

- Investigation. Under the ERD rules, the department has the power to subpoena persons or documents and seeks cooperation on obtaining other information while investigating. The PC had full discovery authority under chapter 804, Stats., and a party had 30 days to respond.

- State employee investigation waiver. Under s. 230.45 (1m), Stats., a state employee complainant could waive the PC investigation and proceed to hearing. 2003 Wisconsin Act 33 does not affect this provision. The "commission" language in s. 230.45 (1m), Stats., now refers to WERC. Even though s. 230.45 (1m), Stats., now applies to WERC, it still specifically mentions s. 103.10 (12) (b), Stats., relating to the family and medical leave law, which is under the jurisdiction of ERD. The ERD rules allow a state employee to waive the investigation for complaints filed under the family and medical leave law but not any of the other duties transferred from the PC.

- Appeal of initial determination of no probable cause. Under the PC rule and ERD's fair employment and whistleblower rules, the deadline for appealing an initial determination of no probable cause is 30 days. Under ERD's family and medical leave rule, the deadline is 10 days.

- Discovery. Under ERD's fair employment and whistleblower rules, a party seeking discovery directed at a party not represented by legal counsel must notify the party who is not represented and the chief of the hearing section or ALJ at least 10 days before conducting the discovery. All copies of demands for discovery must be filed with the department at the time they are served, and copies of responses and the original transcript of a deposition must be filed with the department. Under ERD's family and medical leave rule, a party must obtain written consent from the ALJ to conduct discovery directed to a complainant not represented by legal counsel. The PC had no special provisions affecting discovery directed to a party not represented by legal counsel.

- State employee witnesses. The PC rules allowed an ALJ to issue a letter to compel the attendance of a state employee witness or the production of documents from a state employee. Under the ERD rules, a subpoena is required.

- Exchange of exhibits and witness lists. Under the PC rules, witness lists and copies of exhibits had to be exchanged at least 3 days before the hearing. Under the ERD rules, they must be exchanged at least 10 days before the hearing.

- Place of hearing. The PC had discretion on the location of the hearing. In fair employment and whistleblower cases, the ERD must hold the hearing in the county where the alleged act of discrimination occurred or another location with the consent of the parties. In family and medical leave cases, the ERD hearing is either in the county of the respondent's principal place of business or the county in which the action prohibited by the law appears to have occurred.

- Proposed decisions. The PC hearing examiners issued proposed decisions with the opportunity for parties to file written objections. The final decision was issued by the Personnel Commissioners. The ERD hearing examiners do not issue proposed decisions.

- Appeal. Orders of the Personnel Commission were subject to judicial review under ch. 227, Stats. Orders of the ERD may be appealed to the Labor and Industrial Review Commission (LIRC) and then circuit court, except family and

medical leave cases and whistleblower cases, which are appealable directly to circuit court and not LIRC.

The above changes related to the transfer of Personnel Commission responsibilities to the Equal Rights Division were ordered by emergency rule. In addition, the department proposes the following revisions to the civil rights rules:

- The deadline to amend a complaint absent a finding of good cause is changed from 20 to 45 days before the hearing in the fair employment, fair housing, and public accommodations rules.

- The department may dismiss a portion of a complaint if that portion fails to meet the department's preliminary review that the parties are covered by the relevant law and the complaint states a claim for relief under the fair employment, fair housing, public accommodations, or family and medical leave law. Authority to dismiss the entire complaint already exists.

- The department may dismiss a complaint prior to the investigation if the complainant fails to respond to certified mail from the department within 20 days, the complainant signed a valid release of the claim, or the allegations in the complaint have been previously dismissed by the department or a state or federal court. This dismissal is subject to appeal to an ALJ in the Equal Rights hearing section and further appeal to LIRC. This revision is proposed for the fair employment and fair housing rules.

- The respondent shall mail a copy of the answer to other parties and file a certification of mailing with the department, rather than the department serving the answer on the other parties. This revision is proposed for the fair employment, fair housing, and public accommodations rules.

- Names of witnesses and copies of exhibits must be exchanged with other parties and filed with the division at least 10 days before the hearing. The proposed rule makes service complete upon mailing rather than receipt. It also provides for mandatory, rather than discretionary, exclusion of witnesses and exhibits not identified in a timely fashion, unless good cause is shown. These proposed changes affect the fair employment and fair housing rules.

- An appeal of a preliminary determination dismissing a complaint in a family and medical leave case will be heard by an ALJ in the division hearing section. Under the current rule, the division administrator of the Equal Rights Division, or a person assigned by the administrator, receives these appeals.

- The proposed rule makes conciliation discretionary, rather than mandatory, in family and medical leave cases.

Initial Regulatory Flexibility Analysis

The rule changes primarily affect state respondents and individuals filing complaints against state respondents. There are some minor changes that may affect small business but these changes will not have a significant economic impact on these businesses.

Fiscal Impact

The proposed rule changes do not have a fiscal effect on state or local government.

Contact Information

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>.

A paper copy may be obtained at no charge by contacting:

Elaine Pridgen

Office of Legal Counsel

Dept. of Workforce Development

201 E. Washington Avenue

P.O. Box 7946

Madison, WI 53707–7946

(608) 267–9403

elaine.pridgen@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than October 31, 2003, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

**Controlled Substances Board
(CR 03-056)**

Ch. CSB 2, relating to rescheduling buprenorphine from a schedule V controlled substance to a schedule III controlled substance under federal law.

**Controlled Substances Board
(CR 03-057)**

Ch. CSB 2, relating to the scheduling of a schedule III controlled substance.

**Natural Resources
(CR 03-049)**

Ch. NR 428, relating to the control of emissions of nitrogen oxides.

**Public Instruction
(CR 03-073)**

Ch. PI 8, relating to audits of the school district standards.

**Transportation
(CR 99-135)**

Chs. Trans 138 and 139, relating to dealer facilities, records and licenses; and motor vehicle trade practices.

**Transportation
(CR 03-059)**

Ch. Trans 327, relating to motor carrier safety requirements.

**Transportation
(CR 03-060)**

Chs. Trans 325 and 326, relating to motor carrier safety regulations.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Accounting Examining Board (CR 02-120)

An order affecting ch. Accy 1, relating to independence standards of the accounting profession.
Effective 12-1-03.

Commerce (CR 03-046)

An order affecting ch. Comm 108, relating to the deployment of rapid response funds to preserve economic development in Wisconsin.
Effective 11-1-03.

Dentistry Examining Board (CR 02-138)

An order affecting ch. DE 6, relating to dental specialties.
Effective 12-1-03

Health and Family Services (CR 03-033)

An order affecting various chapters, making minor revisions to the department's body of administrative code.
Effective 1-1-04.

Health and Family Services (CR 03-048)

An order affecting ch. HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP).
Effective 12-1-03.

Pharmacy Examining Board (CR 01-175)

An order affecting ch. Phar 7, relating to the requirements for a central fill system.
Effective 12-1-03

Workforce Development (CR 03-053)

An order affecting ch. DWD 274, relating to hours of work and overtime.
Effective 12-1-03

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